

within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action (including preparation for such Action) in which the requesting party may from time to time be involved, regardless of whether such Action (or preparation for such action) is a matter with respect to which indemnification may be sought hereunder. The requesting party shall bear all costs and expenses (including allocated costs of in-house counsel and other personnel) in connection therewith.

(b) If an Indemnifying Party chooses to defend or to seek to compromise or settle any Third Party Claim, or if any party chooses or is required to prosecute, pursue, otherwise evaluate or defend any Action, the other parties shall cooperate in such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be.

(c) Without limiting the foregoing, the parties shall cooperate and consult to the extent reasonably necessary with respect to any Actions.

(d) Without limiting any provision of this Section 7.07, each of the parties agrees to cooperate, and to cause each member of its respective Group to cooperate, with each other in the defense of any infringement or similar claim with respect to any intellectual property and shall not claim to acknowledge, or permit any member of its respective Group to claim to acknowledge, the validity or infringing use of any intellectual property of a third Person in a manner that would hamper or undermine the defense of such infringement or similar claim.

(e) The obligation of the parties to make available former, current and future directors, officers, employees, other personnel and agents pursuant to this Section 7.07 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to make available inventors and other officers without regard to whether such individual or the employer of such individual could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 7.07(a)). Without limiting the foregoing, each party agrees that (i) neither it nor any member of its respective Group will take adverse action against any employee of its Group based on such employee's provision of assistance or information to the other party pursuant to Section 7.07(a) and (ii) to the extent relevant and necessary, neither it nor any member of its respective Group will enforce any confidentiality agreement against an employee of its Group that would otherwise prevent or hinder such employee from cooperating or providing information to a requesting party pursuant to Section 7.07(a).

(f) In connection with any matter contemplated by this Section 7.07, the parties will enter into a mutually acceptable joint defense agreement so as to maintain to the extent practicable any applicable attorney-client privilege or work product immunity of either Group.

SECTION 7.08. *Confidentiality.* (a) Subject to Section 7.09, each of AT&T and AT&T Broadband, on behalf of itself and its respective Group, agrees to hold, and to cause its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives to hold, in strict confidence, with at least the same degree of care that applies to its own confidential and proprietary information pursuant to policies in effect at the relevant time, all Information concerning the other Group that is either in its possession (including Information in its possession prior to any of the date hereof, or the Distribution Date) or furnished by the other Group or its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives at any time pursuant to this Agreement, any other Ancillary Agreement or otherwise, and shall not use any such Information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such Information has been (i) in the public domain through no fault of such party or such party's Group or any of their respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives, (ii) later lawfully acquired from other sources by such party (or such party's Group), which sources are not themselves bound by a confidentiality obligation, or (iii) independently generated without reference to any proprietary or confidential Information of the other party.

(b) Each party agrees not to release or disclose, or permit to be released or disclosed, any such Information concerning the other Group to any other Person, except its directors, officers, employees, agents, accountants, counsel and other advisors and representatives who need to know such Information (who shall be advised of their obligations hereunder with respect to such Information), except in compliance with Section 7.09. Without limiting the foregoing, when any Information is no longer needed for the purposes contemplated by this Agreement or any other Ancillary Agreement, each party will promptly after request of the other party either return to the other party all Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or certify to the other party that it has destroyed such Information (and such copies thereof and such notes, extracts or summaries based thereon).

SECTION 7.09. *Protective Arrangements.* In the event that any party or any of its Subsidiaries either determines on the advice of its counsel that it is required to disclose any Information concerning the other Group pursuant to applicable law or receives any demand under lawful process or from any

Governmental Authority to disclose or provide Information concerning the other Group that is subject to the confidentiality provisions hereof, such party shall notify the other party of such disclosure at least five days prior to disclosing or providing such Information and shall cooperate at the expense of the requesting party in seeking any reasonable protective arrangements requested by such other party. Subject to the foregoing, after a court of competent jurisdiction has had an opportunity to rule on such protective arrangements, the Person that received such request may thereafter disclose or provide Information to the extent required by such law (as so advised by counsel) or by lawful process or such Governmental Authority.

## ARTICLE 8

### FURTHER ASSURANCES AND ADDITIONAL COVENANTS

SECTION 8.01. *Further Assurances.* (a) In addition to the actions specifically provided for elsewhere in this Agreement, the other Ancillary Agreements and the Merger Agreement, but subject to the provisions hereof and thereof, each of the parties hereto shall use its reasonable best efforts, prior to, on and after the Distribution Date, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement, the other Ancillary Agreements and the Merger Agreement.

(b) Without limiting the foregoing, prior to, on and after the Distribution Date, each party hereto shall cooperate with the other party, and without any further consideration, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain all consents, approvals or authorizations of, any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument (including any Consents or Governmental Approvals), and to take all such other actions as such party may reasonably be requested to take by any other party hereto from time to time, consistent with the terms of this Agreement, the other Ancillary Agreements and the Merger Agreement, in order to effectuate the provisions and purposes of this Agreement, the other Ancillary Agreements and the Merger Agreement and the transfers of the AT&T Broadband Assets and the assignment and assumption of the AT&T Broadband Liabilities and the other transactions contemplated hereby and thereby.

(c) On or prior to the Distribution Date, AT&T and AT&T Broadband in their respective capacities as direct and indirect shareholders of their respective Subsidiaries, shall each ratify any actions that are reasonably necessary or desirable to be taken by AT&T and AT&T Broadband or any other Subsidiary of AT&T, as the case may be, to effectuate the transactions contemplated by this Agreement.

## ARTICLE 9 TERMINATION

SECTION 9.01. *Termination.* This Agreement may be terminated by AT&T prior to the Distribution Date at any time following termination of the Merger Agreement in accordance with its terms.

SECTION 9.02. *Effect of Termination.* In the event of any termination of this Agreement prior to the Distribution Date, no party to this Agreement (or any of its directors or officers) shall have any Liability or further obligation to any other party with respect to this Agreement.

## ARTICLE 10 DISPUTE RESOLUTION AND ARBITRATION

SECTION 10.01. *Agreement to Arbitrate.* Except as otherwise specifically provided in this Agreement (including, without limitation, in Article 6, concerning Third Party Tax Claims) or in any other Ancillary Agreement, the procedures set forth in this Article 10 shall apply to all disputes, controversies or claims (whether sounding in contract, tort or otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby (including all actions taken in furtherance of the transactions contemplated hereby or thereby on or prior to the date hereof), or the commercial or economic relationship of the parties relating hereto or thereto, between or among any member of the AT&T Broadband Group, or the AT&T Communications Group. Each party agrees on behalf of itself and each member of its respective Group that the procedures set forth in this Article 10 shall be the sole and exclusive remedy in connection with any dispute, controversy or claim relating to any of the foregoing matters and irrevocably waives any right to commence any Action in or before any Governmental Authority, except as expressly provided in Sections 10.11(c) and 10.12 and except to the extent provided under the Federal Arbitration Act in the case of judicial

review of arbitration results or awards. Each party on behalf of itself and each member of its respective Group irrevocably waives any right to any trial by jury with respect to any claim, controversy or dispute set forth in the first sentence of this Section 10.01. The parties agree that claims filed pursuant to this Article 10 may seek direct damages but in no event for such claims shall either party be liable to the other for any incidental, special, reliance, consequential or any other indirect damages or losses (including lost profits or revenues).

SECTION 10.02. *Reasonable Best Efforts to Resolve Disputes; Mediation.* It is the intent of the parties to use their respective reasonable best efforts to negotiate and resolve expeditiously any dispute, controversy or claim between or among them that may arise from time to time on a mutually acceptable negotiated basis. The parties may, by mutual consent, retain a mediator to aid in any attempt to informally negotiate resolution of any dispute, although any opinion expressed by a mediator shall be strictly advisory and shall not be binding on the parties, nor shall any opinion expressed by the mediator be admissible in any arbitration proceedings. Costs of a mediation shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses. Mediation is not a prerequisite to a demand for arbitration under Section 10.03.

SECTION 10.03. *Demand for Arbitration.* At any time before the Applicable Deadline, any party involved in the dispute, controversy or claim may make a written demand (the “**Arbitration Demand Notice**”) that the dispute be resolved by binding arbitration, which Arbitration Demand Notice shall be given to the parties to the dispute, controversy or claim in the manner set forth in Section 11.08. Such Arbitration Demand Notice shall describe in reasonable detail the facts surrounding such dispute, controversy or claim and the basis of such party’s claim for relief pursuant to this Article. Except as may be expressly provided in any Ancillary Agreement, any Arbitration Demand Notice must be asserted within one year after the later of the occurrence of the act or event giving rise to the underlying claim or the date on which such act or event was, or should have been, in the exercise of reasonable due diligence, discovered by the party asserting the claim (as applicable and as it may in a particular case be specifically extended by the parties in writing, the “**Applicable Deadline**”; *provided* that in no event will the Applicable Deadline occur with respect to any matter before the first anniversary of the Distribution). Any discussions, negotiations or mediations between the parties pursuant to this Agreement or otherwise will not toll the Applicable Deadline unless expressly agreed in writing by the parties. Each of the parties agrees on behalf of itself and each member of its Group that if an Arbitration Demand Notice with respect to a dispute, controversy or claim is not given prior to the expiration of the Applicable Deadline, as between or among the parties and the members of their Groups, such dispute, controversy or claim will be barred. Subject to Sections 10.11(c) and 10.12, upon delivery of an Arbitration

Demand Notice prior to the Applicable Deadline, the dispute, controversy or claim shall be decided by an Arbitration Panel in accordance with the rules set forth in this Article 10.

SECTION 10.04. *Arbitration Panel.* When an Arbitration Demand Notice is given, the parties involved in the dispute, controversy or claim shall attempt to select a sole arbitrator satisfactory to all such parties. In the event the parties are not able jointly to select a sole arbitrator, such parties shall each appoint an arbitrator within 30 days after delivery of the Arbitration Demand Notice. Only one arbitrator may be appointed for the AT&T Broadband Group and the AT&T Communications Group, respectively. In the event that a sole arbitrator is not selected, the two chosen arbitrators, within 30 days after the appointment of the later of them to be appointed, will in turn choose a third arbitrator, and the three arbitrators thus chosen will constitute the arbitration panel.

SECTION 10.05. *Commencement and Place of Arbitration.* The sole arbitrator or arbitration panel (as applicable, the "**Arbitration Panel**") will meet within 30 days of the last appointment to commence the arbitration, which period may be extended upon the agreement of the arbitrators. The Arbitration Panel will set a time for the hearing of the matter, which will commence no later than 90 days after the date of the last appointment. The place of any arbitration hereunder will be as agreed upon by the parties, or, if the parties are unable to agree, as set by the Arbitration Panel.

SECTION 10.06. *Arbitration Hearings.* The matter shall be presented to the Arbitration Panel at a hearing by means of written submissions of memoranda and verified witness statements, filed simultaneously, and responses, if necessary in the judgment of the arbitrator or both the parties. If the Arbitration Panel deems it to be appropriate for a fair resolution of the dispute, live cross-examination or direct examination may be permitted. The Arbitration Panel shall actively manage the arbitration with a view to achieving a just, speedy and cost-effective resolution of the dispute, claim or controversy. The arbitration hearing will be no longer than 30 full hearing days, unless in the judgment of the Arbitration Panel the matter is complex and sophisticated and thereby requires a longer time; *provided, however*, that such hearing shall in any event be completed within 180 calendar days. The Arbitration Panel may set time and other limits on the presentation of each party's case, its memoranda or other submissions, and may refuse to receive any proffered evidence, that the Arbitration Panel finds to be cumulative, unnecessary, irrelevant or of low probative nature. Except as otherwise set forth herein, any arbitration hereunder will be conducted in accordance with the CPR Rules for Non-Administered Arbitration of Business Disputes then prevailing (except that the arbitration will not be conducted under the auspices of the CPR and the fee schedule of the CPR will not apply). To the

extent that the provisions of this Agreement and the prevailing rules of the CPR conflict, the provisions of this Agreement shall govern.

SECTION 10.07. *Arbitration Decision.* The final decision of the Arbitration Panel will be rendered in writing to the parties not later than 60 days after the last hearing date, unless otherwise agreed by the parties in writing. The decision of the Arbitration Panel will be final and binding on the parties, and judgment thereon may be had and will be enforceable in any court having jurisdiction over the parties. Arbitration awards will bear interest at an annual rate of the Prime Rate plus 2% per annum.

SECTION 10.08. *Discovery and Related Matters.* Any party involved in the applicable dispute may request limited document production from the other party or parties of specific and expressly relevant documents. Any such discovery shall be conducted expeditiously, and it is intended that discovery shall be limited as compared to the provisions of the Federal Rules of Civil Procedure. Depositions shall not occur except by consent of the parties or by order of the Arbitration Panel. Disputes concerning the document production or other discovery will be determined by written agreement of the parties involved in the applicable dispute or, failing such agreement, will be referred to the Arbitration Panel for resolution. All discovery requests will be subject to the proprietary rights and rights of privilege of the parties, and the Arbitration Panel will adopt procedures to protect such rights and to maintain the confidential treatment of the arbitration proceedings (except as may be required by law). Subject to the foregoing, the Arbitration Panel shall have the power to issue subpoenas to compel the production of documents relevant to the dispute, controversy or claim.

SECTION 10.09. *Arbitration Panel's Authority.* The Arbitration Panel shall have full power and authority to determine issues of arbitrability and to interpret or construe the applicable provisions of this Agreement or any other Ancillary Agreement and to fashion appropriate remedies for breaches of this Agreement (including interim or permanent injunctive relief); *provided that* the Arbitration Panel shall not have any right or authority (i) in excess of the authority a court having jurisdiction over the parties and the controversy or dispute would have absent these arbitration provisions; (ii) to award incidental, special, reliance, consequential, or other indirect damages (including lost profits or revenues); (iii) to award punitive or treble damages; or (iv) to modify the terms of this Agreement. It is the intention of the parties that in rendering a decision, the Arbitration Panel give effect to the applicable provisions of this Agreement and the other Ancillary Agreements and follow applicable law (it being understood and agreed that this sentence shall not give rise to a right of judicial review of the arbitrator's award).

SECTION 10.10. *Confidentiality*. Except as required by law, the parties agree that the existence and contents of the entire arbitration, including the award, shall be deemed a compromise of a dispute under Rule 408 of the Federal Rules of Evidence, shall not be discoverable in any proceeding, shall not be admissible in any court (except for the enforcement thereof) or arbitration and shall not bind or collaterally estop either party with respect to any claim or defense asserted by any third party. Except as required by law, the parties shall hold, and shall cause their respective officers, directors, employees, agents and other representatives to hold, the existence, content and result of the arbitration or any mediation in confidence in accordance with the provisions of Article 7 and except as may be required in order to enforce any award. Each of the parties shall request that any mediator or arbitrator comply with such confidentiality requirement.

SECTION 10.11. *Certain Additional Matters*. (a) If a party fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrator may hear and determine the controversy upon evidence produced by the appearing party.

(b) Arbitration costs will be borne equally by each party involved in the matter, except that each party will be responsible for its own attorneys' fees and other costs and expenses, including the costs of witnesses selected by such party.

(c) Prior to the time at which the Arbitration Panel are appointed, any party may seek one or more temporary restraining orders in a court of competent jurisdiction if necessary in order to preserve and protect the status quo. Neither the request for, or grant or denial of, any such temporary restraining order shall be deemed a waiver of the obligation to arbitrate as set forth herein and the Arbitration Panel may dissolve, continue or modify any such order.

(d) In the event that at any time any member of the Arbitration Panel shall fail to serve as an arbitrator for any reason, the appropriate party or the two party-selected arbitrators, as the case may be, shall select a new arbitrator, in accordance with the procedures set forth in Section 10.04. The extent, if any, to which testimony previously given shall be repeated or may be relied upon based on the stenographic record (if there is one), shall be determined by the replacement arbitrator.

SECTION 10.12. *Limited Court Actions*. (a) Notwithstanding anything herein to the contrary, in the event that any party reasonably determines the amount in controversy in any dispute, controversy or claim (or any series of related disputes, controversies or claims) under this Agreement or any other Ancillary Agreement is, or is reasonably likely to be, in excess of \$100 million and if such party desires to commence an Action in lieu of complying with the

arbitration provisions of this Article 10, such party shall so state in its Arbitration Demand Notice. If the other parties to the arbitration disagree about whether the amount in controversy exceeds \$100 million, the Arbitration Panel selected pursuant to Section 10.04 shall decide the issue. The Arbitration Panel shall set a date no later than ten days after the date of its appointment for submissions by the parties with respect to such issue. There shall be no discovery in connection with such issue. The Arbitration Panel shall render its decision on such issue within five days of such date so set by the Arbitration Panel. The parties agree that any statute of limitations applicable to the dispute, controversy or claim before the Arbitration Panel shall be tolled during the pendency of the decision described in the immediately preceding sentence. In the event that the Arbitration Panel determines that the amount in controversy is or is reasonably likely to be in excess of \$100 million, the provisions of Sections 10.05, 10.06, 10.07, 10.08, and 10.14 shall not apply, and within 15 days of such decision, any party to the arbitration may elect in lieu of arbitration, to commence an Action with respect to such dispute, controversy or claim (or such series of related disputes, controversies or claims) in any court of competent jurisdiction returned to in Section 11.03. If the Arbitration Panel does determine that the amount in controversy is not in excess of \$100 million, the provisions of this Article 10 (including with respect to time periods) shall apply as if no determinations were sought or made pursuant to this Section 10.12(a).

(b) In the event that an arbitration award in excess of \$100 million is issued in any arbitration proceeding commenced hereunder, any party may, within 60 days after the date of such award, submit the dispute, controversy or claim (or series of related disputes, controversies or claims) giving rise thereto to a court of competent jurisdiction, regardless of whether such party or any other party sought to commence an Action in lieu of proceeding with arbitration in accordance with Section 10.12(a). In such event, the applicable court may elect to rely on the record developed in the arbitration or, if it determines that it would be advisable in connection with the matter, allow the parties to seek additional discovery or to present additional evidence. Each party shall be entitled to present arguments to the court with respect to whether any such additional discovery or evidence shall be permitted and with respect to all other matters relating to the applicable dispute, controversy or claim (or series of related disputes, controversies or claims).

**SECTION 10.13. *Continuity of Performance and Remaining Obligations.*** Unless otherwise agreed in writing, the parties will continue to provide service and honor all other commitments under this Agreement and each other Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article 10 with respect to all matters not subject to such dispute, controversy or claim.

SECTION 10.14. *Law Governing Arbitration Procedures.* The interpretation of the provisions of this Article 10, only insofar as they relate to the agreement to arbitrate and any procedures pursuant thereto, shall be governed by the Federal Arbitration Act and other applicable federal law. In all other respects, the interpretation of this Agreement shall be governed as set forth in Section 11.02.

SECTION 10.15. *Non-applicability of Article.* Notwithstanding anything herein to the contrary, this Article 10 shall not apply to any dispute, controversy or claim or to any other matter whatsoever arising under Section 6.02 or 6.03, the Tax Sharing Agreement, any other Tax sharing agreement or any Third Party Tax Claims or to any other matter relating to Taxes. This Article similarly shall not apply to the extent provided in any other Ancillary Agreement.

## ARTICLE 11 MISCELLANEOUS

SECTION 11.01. *Counterparts; Entire Agreement; Corporate Power.* (a) This Agreement and each other Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

(b) This Agreement, and the other Ancillary Agreements and the Exhibits, Schedules and Appendices hereto and thereto contain the entire agreement between the parties with respect to the subject matter hereof or thereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter and there are no agreements or understandings between the parties other than those set forth or referred to herein or therein.

(c) AT&T represents on behalf of itself and each of its Subsidiaries (other than the AT&T Broadband Entities) and AT&T Broadband represents on behalf of itself and each other AT&T Broadband Entity:

(i) each such Person is a corporation or other entity duly incorporated or formed, validly existing and in good standing under the laws of the state of its incorporation or formation, has all corporate or other similar powers required to carry on its business as currently conducted and is duly qualified to do business and is in good standing in each jurisdiction where such qualification is necessary, except for those

jurisdictions where failure to be so qualified, individually or in the aggregate, has not had and would not reasonably be expected to have an AT&T Material Adverse Effect or an AT&T Broadband Material Adverse Effect, respectively;

(ii) each such Person has the requisite corporate or other power and authority and has taken all corporate or other similar action necessary in order to execute, deliver and perform each of this Agreement and each other Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(iii) this Agreement and each other Ancillary Agreement to which any such Person is a party has been duly executed and delivered by such Person and constitutes a valid and binding agreement of such Person enforceable in accordance with the terms thereof.

(d) Each party hereto acknowledges that it and each other party hereto is executing certain of the Ancillary Agreements by facsimile, stamp or mechanical signature. Each party hereto expressly adopts and confirms each such facsimile, stamp or mechanical signature made in its respective name as if it were a manual signature, agrees that it will not assert that any such signature is not adequate to bind such party to the same extent as if it were signed manually and agrees that at the reasonable request of any other party hereto at any time it will as promptly as reasonably practicable cause each such Ancillary Agreement to be manually executed (any such execution to be as of the date of the initial date thereof).

SECTION 11.02. *Governing Law.* This Agreement and, unless expressly provided therein, each other Ancillary Agreement, shall be governed by and construed and interpreted in accordance with the laws of the State of New York, irrespective of the choice of laws principles of the State of New York, as to all matters, including matters of validity, construction, effect, enforceability, performance and remedies.

SECTION 11.03. *Jurisdiction.* Except as otherwise expressly provided in this Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, any of the other Ancillary Agreements or the transactions contemplated hereby or thereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement or out of any of the other Ancillary Agreements shall be deemed to have arisen from a transaction of business in the State of New

York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 11.06 shall be deemed effective service of process on such party.

SECTION 11.04. *Waiver of Jury Trial.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY OF THE OTHER ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 11.05. *Assignability.* Except as set forth in any Ancillary Agreement, this Agreement and each other Ancillary Agreement shall be binding upon and inure to the benefit of the parties hereto and thereto, respectively, and their respective successors and assigns; *provided, however*, that no party hereto or thereto may assign its respective rights or delegate its respective obligations under this Agreement or any other Ancillary Agreement without the express prior written consent of each of the other parties hereto or thereto.

SECTION 11.06. *AT&T Restructuring.* AT&T and AT&T Broadband recognize that AT&T is contemplating creating a tracking stock with respect to its consumer services business. Subject to AT&T's obligations under the Merger Agreement, including Section 9.06(b) thereof, nothing in this Agreement shall prevent the creation by AT&T of any tracking stock with respect to such business or otherwise. In the event of the creation of such a tracking stock, (i) references in this Agreement to AT&T Common Stock shall be adjusted as necessary to accommodate the existence of such tracking stock and (ii) AT&T may, but is not required to, distribute all or a portion of the shares of such tracking stock in the Distribution. In the event any such tracking stock is distributed in connection with the Distribution, Article 4 shall be revised to appropriately account for such distribution. Any adjustment or revision pursuant to the preceding sentence shall be reasonably satisfactory to Comcast.

SECTION 11.07. *Third Party Beneficiaries.* Except for Comcast, which prior to any termination of this Agreement shall be a third party beneficiary of

AT&T Broadband's rights under to this Agreement and each other Ancillary Agreement, and except for the indemnification rights under this Agreement of any AT&T Indemnatee or AT&T Broadband Indemnatee in their respective capacities as such, and except as specifically provided in the Employee Benefits Agreement, (i) the provisions of this Agreement and each other Ancillary Agreement are solely for the benefit of the parties and are not intended to confer upon any Person except the parties any rights or remedies hereunder, and (ii) there are no third party beneficiaries of this Agreement or any other Ancillary Agreement and neither this Agreement nor any other Ancillary Agreement shall provide any third person with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any other Ancillary Agreement.

SECTION 11.08. *Notices.* All notices or other communications under this Agreement or any other Ancillary Agreement shall be in writing and shall be deemed to be duly given when (a) delivered in person or (b) deposited in the United States mail or private express mail, postage prepaid, addressed as follows:

If to AT&T, to:

AT&T Corp.  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
Attention: Marilyn J. Wasser  
Fax: (908) 953-8360

with a copy to:

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attention: Richard D. Katcher  
Steven A. Rosenblum  
Stephanie J. Seligman  
Fax: (212) 403-2000

If to AT&T Broadband, to: AT&T Broadband Corp.  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
Attention: Marilyn J. Wasser  
Fax: (908) 953-8360

with a copy to:

Comcast Corporation  
1500 Market Street  
Philadelphia, Pennsylvania 19102  
Attention: General Counsel  
Fax: (215) 981-7794

and:

Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017  
Attention: Dennis S. Hersch  
William L. Taylor  
Fax: (212) 450-4800

Any party may, by notice to the other party, change the address to which such notices are to be given.

**SECTION 11.09. *Severability.*** If any provision of this Agreement or any other Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party. Upon such determination, the parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties.

**SECTION 11.10. *Expenses.*** The provisions of Sections 11.03(a)-(c) of the Merger Agreement are hereby incorporated by reference.

SECTION 11.11. *Headings.* The Article, Section and paragraph headings contained in this Agreement and in the other Ancillary Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any other Ancillary Agreement.

SECTION 11.12. *Waivers of Default.* Waiver by any party of any default by the other party of any provision of this Agreement or any other Ancillary Agreement shall not be deemed a waiver by the waiving party of any subsequent or other default, nor shall it prejudice the rights of the other party.

SECTION 11.13. *Specific Performance.* In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any other Ancillary Agreement, the party or parties who are or are to be thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement or such other Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived.

SECTION 11.14. *Amendments.* No provisions of this Agreement or any other Ancillary Agreement shall be deemed waived, amended, supplemented or modified by any party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the party against whom such waiver, amendment, supplement or modification it is sought to be enforced.

SECTION 11.15. *Late Payments.* Except as expressly provided to the contrary in this Agreement or in any other Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any other Ancillary Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within 30 days of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the Prime Rate plus 2%.

SECTION 11.16. *Interpretation.* Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other genders as the context requires. The terms "hereof," "herein," and "herewith" and words of similar import herein (or in any Ancillary Agreement) shall, unless otherwise stated, be construed to refer to this Agreement (or the applicable other Ancillary Agreement) taken as a whole (including all of the

Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement (or such other Ancillary Agreement). Article, Section, Exhibit, Schedule and Appendix references are to the Articles, Sections, Exhibits, Schedules and Appendices to this Agreement (or the applicable other Ancillary Agreement) unless otherwise specified. The word "including" and words of similar import when used in this Agreement (or the applicable other Ancillary Agreement) means "including, without limitation," unless the context otherwise requires or unless otherwise specified. The word "or" shall not be exclusive. Unless expressly stated to the contrary in this Agreement or in any other Ancillary Agreement, all references to "the date hereof," "the date of this Agreement," "hereby" and "hereupon" and words of similar import shall all be references to December 19, 2001 (or the date of which the relevant Ancillary Agreement is first entered into, as the case may be) regardless of any amendment or restatement hereof (or thereof). References to a "member" of either Group shall be held to include any corporation or other Person within the definition of such Group. References to "legal fees" shall include allocated costs of in-house counsel. The parties hereto have participated jointly in the negotiation and drafting of this Agreement, and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Separation and Distribution Agreement to be executed by their duly authorized representatives.

**AT&T CORP.**

By: /s/ Marilyn J. Wasser  
Name: Marilyn J. Wasser  
Title: Vice President – Law and  
Secretary

**AT&T BROADBAND CORP.**

By: /s/ Robert S. Feit  
Name: Robert S. Feit  
Title: Vice President and Assistant  
Secretary

## ANNEX I

The following provisions set forth the parties' understandings with respect to the disposition of all or any portion of the interest in TWE (the "**TWE Interest**") held, as of the date hereof, by MediaOne TWE Holdings, Inc. and its affiliates at any time or from time to time whether prior to or after the Closing Date:

(a) The following terms, as used in this Annex I, have the following meanings:

**"Closing Date"** has the meaning set forth in the Merger Agreement.

**"Contingent Payment"** means (i) 50% of the excess, if any, of (A) the Determined Value over (B) the Threshold Amount, reduced by (ii) an amount equal to the product of 50% of such excess and the rate set forth in subparagraph (c) hereof.

**"Determined Value"** means the Fair Market Value of the TWE Interest or portion thereof disposed of, as the case may be; *provided, however*, that if all or any portion of the TWE Interest is disposed of within the TWE Disposition Period under Article XIII of the TWE Partnership Agreement or pursuant to one or more negotiated dispositions or public or private market dispositions, then the Determined Value with respect to such portion shall be the Proceeds from such disposition(s).

**"Fair Market Value"** means with respect to all or any portion of the TWE Interest, the Proceeds that would be received in a public offering of such interest (or corresponding equity securities of a corporation into which TWE is converted or that holds the TWE interest) (after deducting (i) reasonable expenses, including underwriters' discounts and commissions and (ii) in the event such offering is an initial public offering, an appropriate initial public offering discount) based on the then prevailing market conditions.

**"Parent"** has the meaning set forth in the Merger Agreement.

**"Proceeds"** means (subject to clause (d) below) (a) if the proceeds are paid in cash, the amount of the cash actually received;

(b) if the proceeds are paid in securities, assets or rights:

(i) in the case of securities, assets or rights listed on any established stock exchange or a national market system including the National Market System of the National Association of Securities Dealers,

Inc. Automated Quotation ("NASDAQ") System, Proceeds means the average of the closing sales price for such item (or the closing bid, if no sales were reported) reported in the Wall Street Journal for the 20 consecutive trading day period prior to such date;

(ii) in the case of securities, assets or rights quoted on the NASDAQ System (but not on the National Market System thereof) or regularly quoted by a recognized securities dealer but selling prices are not reported, Proceeds means the average of the means between the high and low asked prices for the item for the 20 consecutive trading day period prior to such date; or

(iii) in the absence of an established market for the securities, assets or rights (including the rights embodied in this Annex I), Proceeds means the fair value thereof as determined in good faith by a mutually acceptable investment banking firm.

**"Threshold Amount"** means at any given time, an amount, which will initially be \$10.2 billion and shall be reduced by the aggregate Proceeds of previous dispositions of the TWE Interest received from time to time, *provided* that from the date the Merger Agreement is entered into, the outstanding balance of the Threshold Amount from time to time shall bear simple interest at a rate of 7% per annum and such interest shall be added to the Threshold Amount.

**"TWE Disposition Period"** has the meaning set forth in clause (b) of this Annex I.

(b) If all or any part of the TWE Interest is disposed of by AT&T Broadband, Parent or their respective successors during the period beginning on the date the Merger Agreement is signed and ending on the last day of the 54<sup>th</sup> month after the Closing Date (the **"TWE Disposition Period"**), and the Closing occurs, AT&T Broadband shall pay to AT&T on behalf of the AT&T Communications Group, an amount equal to the Contingent Payment. Any Contingent Payment shall be paid in the same proportion of cash, securities, assets and rights as was received in the disposition and no Contingent Payment shall be made until amounts equal to the Threshold Amount have been received as Proceeds. For the avoidance of doubt, the transactions contemplated by the Merger Agreement and this Agreement shall not be considered a disposition for purposes hereof.

(c) If the TWE Interest has not been fully disposed of within the TWE Disposition Period, the remaining interest shall be appraised by a mutually acceptable investment banking firm on the basis of Fair Market Value. To the extent that the Proceeds that would be received if such remaining interest were

disposed of for Fair Market Value exceeds the Threshold Amount, AT&T Broadband shall pay to AT&T on behalf of the AT&T Communications Group an amount in cash equal to 50% of such excess, reduced by an amount equal to the product at 50% of such excess and the tax rate set forth in subparagraph (e) hereof, and AT&T Broadband shall have no further obligations under this Annex I. If no payment is required to be made pursuant to the preceding sentence, AT&T Broadband shall have no further obligations under this Annex I.

(d) In the event that, before the Closing Date, AT&T (subject to Section 8.01(xii) of the Merger Agreement), or after the Closing Date, Parent, effects a disposition of the TWE Interest on a Tax deferred basis, the payment to be made to AT&T (taking into account the present value of the deferred Tax, the direct and indirect costs of executing the transaction (including the detriment of any guarantees required to be given) and the risk of the transaction) shall be determined in good faith by the Board of Directors of AT&T Broadband or Parent, as applicable.

(e) For purposes of this Annex I, the Tax rate will be assumed to be the highest combined federal, state and local marginal corporate Tax rate in effect at the relevant time.

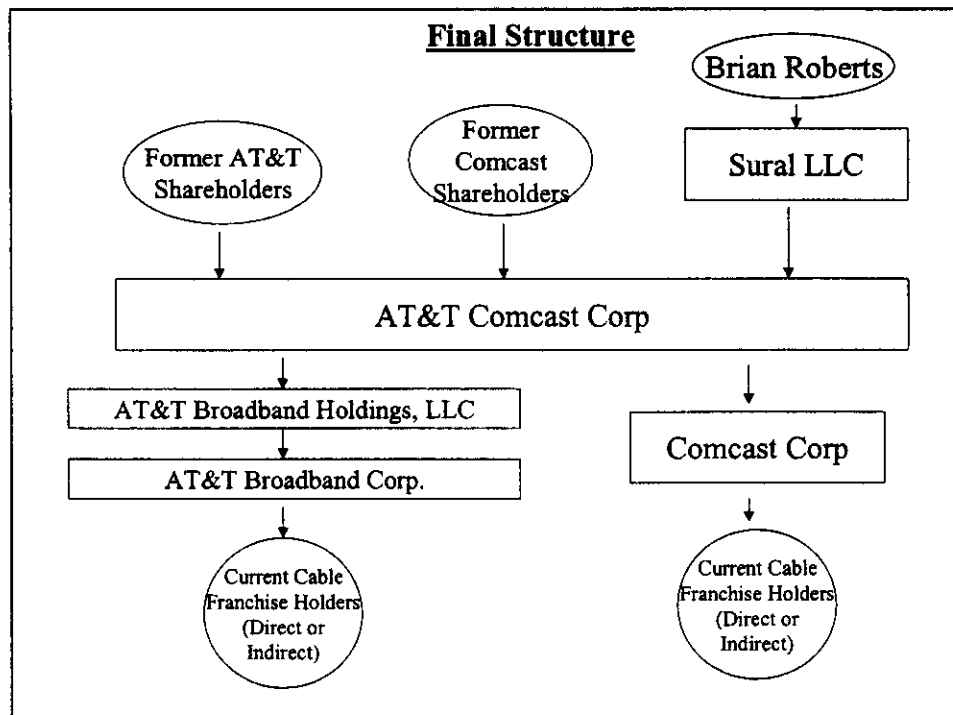
(f) For all Tax purposes (unless required by a change in applicable Tax law or resolution of a contest conducted in good faith and not settled, compromised and/or conceded without the other party's consent, which shall not be unreasonably withheld), the parties hereto agree to treat, and to cause their respective affiliates to treat any payment hereunder as a distribution by AT&T Broadband to AT&T, as the case may be, occurring immediately prior to the Distribution and in connection with the Distribution.



# **APPENDIX 4**

## **AT&T Comcast Corporation: Ultimate Corporate Structure**

*With the completion of the merger transaction, AT&T Comcast Corporation will be the new public company parent of both Comcast Corporation and AT&T Broadband, which will be wholly owned “brother/sister” subsidiaries of AT&T Comcast Corporation.*



# **APPENDIX 5**

**CONFORMED COPY**

**EXCHANGE AGREEMENT**

dated as of

December 7, 2001

between

**MICROSOFT CORPORATION**

and

**COMCAST CORPORATION**